

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JEFFRY L. WATTS

Claimant

VS.

PRESBYTERIAN MANORS, INC.

Respondent

Self-Insured

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Docket No. 227,448

ORDER

Claimant requested Appeals Board review of the preliminary hearing Order Denying Compensation entered by Administrative Law Judge Floyd V. Palmer on October 27, 1997.

ISSUES

Whether claimant gave respondent timely notice of accident as required by K.S.A. 44-520 is the issue before the Appeals Board for review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Whether claimant gave the respondent timely notice of accident is an issue that subjects a preliminary hearing order to review by the Appeals Board. See K.S.A. 44-534a, as amended.

Claimant's request for preliminary medical and temporary total disability compensation was denied by the Administrative Law Judge. The Administrative Law Judge found claimant had not given respondent notice of a work-related accident within ten days and further found claimant had not established just cause for failure to give the

ten day notice as required by K.S.A. 44-520. The Appeals Board disagrees with the conclusion of the Administrative Law Judge and finds that the claimant gave the required notice of accident to the respondent within ten days.

Claimant testified he injured his low back at work on June 30, 1997, while he was spraying weeds. Claimant testified he bent down to spray underneath a bush and "something in my back let go and I couldn't get back up." Claimant testified the accident was witnessed by two of respondent's residents and an employee employed as a housekeeper by the respondent.

Immediately after the accident, claimant's supervisor, Lyle Adams, was paged and notified that claimant had been hurt at the Tower Apartment entrance located on the property of the respondent. Mr. Adams testified he found claimant sitting on a bench holding his side in obvious pain when he arrived at the accident scene. Claimant testified he told his supervisor that "I bent over and something went haywire." Mr. Adams testified he asked claimant what happened and claimant indicated he was pulling and spraying weeds and he felt something give. Mr. Adams also testified claimant told him it was an old injury acting up. Mr. Adams then placed claimant in a wheelchair and took claimant to the respondent's dispensary. Claimant was later transported by the respondent's human resource director to St. Francis Hospital Emergency Room.

The St. Francis Emergency Department record dated June 30, 1997, was admitted into evidence at the preliminary hearing and contains a history taken by a registered nurse at the time the claimant was treated. That history indicates claimant was bending over that morning when he felt a sharp pain in his low back causing him to fall to his knees and he was unable to get up. The history contained the observation that claimant ambulated slowly and stooped over and held his low back.

Respondent argues and the Administrative Law Judge found that claimant did not relate his pain and discomfort in his low back to his work until the respondent received a written claim for compensation from claimant on July 31, 1997. The Administrative Law Judge then concluded the claimant failed to notify the respondent of the accident within ten days and also did not have just cause for failure to give the ten day notice. Respondent argues that the July 31, 1997, claim was the first notice it received that claimant was relating the June 30, 1997, accident to his low back injury. The respondent urges the Appeals Board to affirm the Administrative Law Judge decision that claimant's claim for preliminary workers compensation benefits is barred pursuant to K.S.A. 44-520 because the claimant failed to notify respondent that the June 30, 1997, work-related accident resulted in his low back injury.

K.S.A. 44-520 requires claimant to give the employer notice of accident within ten days thereof or establish just cause within 75 days of the accident for failure to give the ten day notice. However, actual knowledge of the accident by the employer or the employers duly authorized agent renders the giving of notice unnecessary. The Appeals Board finds

that claimant's supervisor, Lyle Adams, had actual notice of claimant's work-related accident moments after claimant injured his low back while spraying and pulling weeds for the respondent on June 30, 1997. Mr. Adams' and claimant's testimony both support this conclusion. Mr. Adams found claimant at the accident scene following the accident in obvious pain. Mr. Adams testified he asked claimant what he had done and claimant replied "Well, I was just pulling weeds and bending and spraying herbicides and stuff on the grass and stuff and felt something give." The claimant testified he essentially described the same situation to Mr. Adams.

The Appeals Board concludes, under those circumstances, that claimant was not required to specifically notify the respondent he injured his back at work. The preliminary hearing record describes a situation where it is obvious to any reasonable person that claimant either suffered a new low back injury or aggravated a pre-existing low back problem while he was performing his regular activities for the respondent on June 30, 1997.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order Denying Compensation entered by Administrative Law Judge Floyd V. Palmer on October 27, 1997, should be, and is hereby, reversed and the case is remanded to the Administrative Law Judge with directions to address the remaining preliminary hearing issues of claimant's request for medical compensation and temporary total disability compensation.

IT IS SO ORDERED.

Dated this ____ day of December, 1997.

BOARD MEMBER

c: Cathleen M. Reeder, Topeka, Kansas
Jeffrey B. Hurt, Wichita, Kansas
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director